



Texas Medical Board

BOARD MEETING MINUTES

November 6, 2009

The meeting was called to order November 6, 2009 at 8:03 a.m. by Irvin E. Zeitler, Jr., D.O., Board President. Board members present were Melinda McMichael, M.D.; Timothy J. Turner, Secretary/Treasurer; Michael Arambula; Julie Attebury; David Baucom; Jose M. Benavides, M.D.; Patricia Blackwell; John D. Ellis, Jr.; Manuel Guajardo, M.D.; J. Scott Holliday, D.O.; Margaret McNeese, M.D.; Charles Oswalt, M.D.; Allan N. Shulkin, M.D.; Wynne M. Snoots, M.D.; Paulette B. Southard; Timothy Webb, J.D.; and George Willeford III, M.D. Board staff present were Mari Robinson, Executive Director; Alan Moore, M.D., Medical Director; Jane McFarland, Chief of Staff; Nancy Leshikar, J.D., General Counsel; and various other staff.

Dr. Holliday read the boards mission statement into the minutes.

Our Boards mission is to protect and enhance the publics health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education.

Agenda item #2, Presidents Report. Dr. Zeitler gave a report on the Federation of State Medical Boards request for committee appointment recommendations and for nominations for Federation officers. Dr. Zeitler encouraged the board members participation in the Federation.

Agenda item #3, Executive Directors Report. Ms. Robinson announced the retirement of Jane McFarland, Chief of Staff, and thanked her for her dedication and service to the agency.

Ms. Robinson gave a report on the status of the new Texas Physician Health Program.

After Ms. Robinson gave a report on the membership of stakeholder workgroups, the board directed staff to evaluate stakeholder membership to include members to represent rural healthcare.

Ms. Robinson gave a follow-up report on the board retreat for alternate ways to handle many of the cases that are currently set for Informal Settlement Conferences. The board directed staff to create a Quality Assurance Panel that will meet by teleconference to make recommendations on cases with completed investigations that have initially been referred to hearings.

Agenda item #4, Medical Directors Report. Dr. Moore gave an update on the progress of the Expert Panelist tutorial.

Dr. Moore gave a report on a policy for administrative medicine complaints. After discussion, the board appointed Dr. Arambula the chair of a subcommittee to evaluate administrative medicine complaints and to clarify the unique role and duties of designated administrative physicians appointed by the court or Workers Compensation on a case by case basis as complaints are received.

Agenda item #5, Discussion of Office Based Anesthesia. Deferred to be addressed later in the meeting.

Agenda item #6, Discussion, recommendation, and possible action regarding revised Tanning Advisory/Warning Statement. After discussion, Mr. Turner moved, Ms. Blackwell seconded, and the motion passed to revise the Tanning Advisory Statement to a WARNING statement in accordance with HB 1310 enacted by the 81st Legislature.

Agenda item #20, Consideration and Approval of Proposal for Decision at 8:30 a.m., Jacques Sandhara Jaikaran, M.D.; SOAH #503-09-2535. Roy Scudday, Administrative Law Judge, gave a report and recommendation. Dr. Jaikaran and his attorney were not present for the meeting. Scott Freshour, staff attorney, gave a presentation. After discussion, Mr. Turner moved, Dr. Arambula seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #6 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to approve the Final Order by staff including the denial of Dr. Jaikarans licensure application.

Agenda item #7, Discussion and possible action of current litigations. Ms. Leshikar gave a report on current litigation.

Agenda item #5, Discussion of Office Based Anesthesia. After discussion, the board directed staff to draft a proposed office based anesthesia rule with stakeholder input, eliminating #1 which is ambulatory.

Agenda item #20, Consideration and Approval of Proposal for Decision at 9:00 a.m., Denise Greenwood, M.D.; SOAH #503-09-0938. Roy Scudday, Administrative Law Judge, gave a report and recommendation. Dr. Greenwood was not present at the meeting. John Heisler, staff attorney, gave a presentation. After discussion, Dr. McMichael moved and Dr. Arambula seconded a motion to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #6 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to approve the Final Order by staff for restriction of Dr. Greenwoods license.

After discussion, Mr. Turner moved, Ms. Blackwell seconded, and a friendly motion passed to amend Dr. McMichaels motion to require the respondent to appear before the board to prove competency before practicing in Texas.

After Dr. McMichael restated the motion with the friendly amendment, the motion passed to adopt the Findings of Fact and Conclusion of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #6 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to approve the Final Order by staff including the restriction of Dr. Greenwoods license, with the modification to require the respondent to appear before the board to prove competency before practicing in Texas.

Agenda item #20, Consideration and Approval of Proposal for Decision at 9:15 a.m., Charles R. Massey, M.D.; SOAH #503-09-0554. Ami Larson, Administrative Law Judge, gave a report and recommendation. Dr. Massey and his attorney were present and gave a presentation. Roger Calhoun, staff attorney, was present and gave a presentation. After discussion, Mr. Turner moved, Dr. McMichael

seconded, and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #7 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to approve the Final Order by staff including the revocation of Dr. Masseys license.

Agenda item #20, Consideration and Approval of Proposal for Decision at 9:15 a.m., Allegra Garcia-Cantu, M.D., SOAH #503-08-4000 was deferred until February 5, 2010.

Agenda item #8, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the **Non-Public Rehabilitation Orders #642, #643, #644, #645, #646, #647, #648, #649 and #650; Nunc Pro Tunc of Rehabilitation Order #547; and Modification Granted of Rehabilitation Order #322.**

Agenda item #9, Consideration and Approval of Agreed Orders. Deferred to later in the meeting.

Agenda item #10, Consideration and Approval of Modification Request/Termination Request Orders. Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the **Modification Request Orders Granted for Thomas R. Konjoyan, D.O.; Christopher M. Sertich, M.D., and Rodolfo G. Giraldi, M.D.**

Agenda item #11, Consideration and Approval of Nunc Pro Tunc Orders. After discussion, Ms. Blackwell moved, Ms. Southard seconded, and the motion passed to approve the **Nunc Pro Tunc Order for Brian B. Rogers, D.O.**

Agenda item #12, Consideration and Approval of Mediated Settlement Agreed Orders. After discussion, Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the **Mediated Settlement Agreed Orders for Robert Battle, M.D.; Philip D. Cochran, M.D.; Arnold Ravdel, M.D.; James Rorig, M.D.; Mohsin M. Syed, M.D.; and Rebecca Maxwell, M.D.**

Agenda item #13, Consideration and Approval of Termination of Suspension Orders. Ms. Southard moved, Ms. Blackwell seconded, and the motion passed to approve the **Denied Termination of Suspension for Alimadad M. Jatoi, M.D., and the Granted Termination of Suspension for Charles Erle Longmoor, M.D.**

There were no items for Agenda item #14.

Agenda item #15, Report on Temporary Suspension. Ms. Leshikar gave a report on the temporary suspension hearing.

Agenda item #16, Report on Automatic Orders. Ms. Leshikar gave a report on the Automatic Order for Carlin G. Batschi, M.D.

Agenda item #17, Consideration and approval of cease and desist orders. After discussion, Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the **cease and desist orders for Richard J. Kones, M.D., and Brooke Herrick, Psy.D.**

Agenda item #18, Consideration and Approval of Determinations of Default. The agenda item was pulled.

Agenda item #19, Consideration and Approval of request for reconsideration of mediated licensure order. Arlene Palazzolo, M.D. was not present. Attorney Ace Pickens was present for Arlene Palazzolo. Scott Freshour, staff attorney, was present. After discussion, the board directed staff to cancel the temporary license for Dr. Palazzolo until a mediated order is signed and received with the modifications changing the order to a three year order, delete requirement for a chart monitor, add the respondent is prohibited from delegating or supervising a Physician Assistant or Nurse Practitioner, and the order cannot be modified for a minimum of one year.

Agenda item #20, Consideration and Approval of Proposal for Decision. (continued)

Rodulfo L. Rivera, M.D.; SOAH #503-07-4100; Penny Wilkov, Administrative Law Judge, gave a report and recommendation. Dr. Rivera was present and gave a presentation. Roger Calhoun, staff attorney, gave a presentation. After discussion, **Dr. McMichael moved and Ms. Southard seconded a motion to adopt the Findings of Fact and Conclusion of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #8 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to approve the Final Order by staff to restrict Dr. Riveras license.**

After discussion, **Mr. Turner moved, Mr. Webb seconded, and the motion passed to approve a friendly amendment to modify the order by extending it for two additional years and to incorporate the standard order provisions.**

After discussion, **Dr. McMichael restated her motion with the friendly amendment, and the motion passed to adopt the Findings of Fact and Conclusion of Law recommended by the Administrative Law Judge in the Proposal for Decision, except Conclusion of Law #8 which is a sanction recommendation from the ALJ, the determination of which is reserved for the board, and to add a modification to extend the order for two additional years and to incorporate the standard order provisions.**

Agenda item #8, Consideration and Approval of Non-Public Rehabilitation Orders and Modification Request/Termination Request of Non-Public Rehabilitation Orders. After discussion, Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the **Non-Public Rehabilitation Orders #642, #643, #644, #645, #646, #647, #648, #649 and #650; Nunc Pro Tunc of Rehabilitation Order #547; and Modification Granted of Rehabilitation Order #322.**

Agenda item #22, Report on Motions for Rehearing. A report was given by Ms. Leshikar.

Consent Agenda, Discussion/Action Items. **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Consent agenda item #1, A. August 21, 2009 Board Meeting Minutes; B. August 19, 2009 Minutes of the Temporary Suspension Without Notice for Dr. Odette Campbell; C. August 19, 2009 Minutes of the Temporary Suspension Without Notice for Dr. Jeffrey E. Lewis; D. Consideration and approval of the October 16, 2009 Minutes of the Temporary Suspension With Notice for Dr. Odette Campbell; and E. Consideration and approval of revised May 28, 2009 Finance Committee Minutes.**

Agenda item #23, Presentation by Cynthia Playfair, M.D. Dr. Playfair gave a presentation the **Boundaries Between Patients and Physicians.**

Agenda item #21, Consideration of Amended Final Order Andrew William Campbell, M.D. Dr. Campbell was present. Ace Pickens was present representing Dr. Campbell. Staff attorney Scott Freshour was present. After discussion, **Dr. McMichael moved, Ms. Attebury seconded, and the motion passed to approve the Amended Final Order with the modification to extend the payment plan to two years.** After discussion, the board revisited consideration of the Amended Final Order for Dr. Campbell. **Mr. Turner moved, Ms. Attebury seconded, and the motion passed to approve the Amended Final Order with the modification to extend payment to two years and to add the standard board order paragraph, and to require Dr. Campbell to return for board approval before returning to practice.**

Agenda item # 24 Discussion, recommendation and possible action regarding the following board rules and chapters in 22 TAC:

Chapter 174. Telemedicine, amendments to

- 174.1, relating to Purpose;
- 174.2, relating to Definitions;
- 174.4, relating to Use of the Internet in Medical Practice, (repeal);
- 174.6, relating to Delegation to and Supervision of Patient Site Presenters;
- proposed new rule 174.7, relating to Medical Records for Telemedicine Medical Services; and proposed new rule 174.8, relating to Use of the Internet in Medical Practice

Written comments were received and reviewed. The following signed-in and presented oral comments: Dr. William Blomb, HHSC, Texas Medicaid/Chip; Dr. Bill Allen, Driscoll Childrens; David Leflow, Texas Tech; Matt Wall, Texas Hospital Association; Dr. Ben Raimer, UTMB; Dr. Owen Muray, UTMB/TT; Dr. Alex Vo, UTMB Center for Telmed Research; Oscar Bollinghouse, UTMB; G. Hamack, Chair of Nu-Physicians, LLC; Fishbin, AAERPSY, JSA Health; Dr. Mark Janes, Texas Council MHMR Centers, Belinda Carlton, Texas Council for Developmental Disabilities; Michael Zucker, Baptist Health System; Jill Switzer, Mental Health America of Texas; Dr. Oscar Boulthinghouse, NuPhysician. After discussion, **Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve to pull the rule for further stakeholder input.**

Chapter 192, Office Based Anesthesia Services, with proposed amendments to

- 192.1, relating to Definitions;
- 192.4, relating to Registration;
- 192.5, relating to Inspections;
- 192.6, relating to Request for Inspection and Advisory Opinions; and proposed new rule
- 192.7, relating to Operation of Pain Management Clinics.

Written comments were received and reviewed. Dr. Schade and Dr. Patrick Giam presented oral comments. After discussion, **Dr. Oswalt moved and Dr. Holliday seconded a motion to pull the rule for further input. The motion failed.** After discussion, **Mr. Turner moved, Ms. Southard seconded, and the motion passed to approve the rule with direction to staff to have a stakeholder workgroup in January for further review to separate pain management from office based anesthesia.**

Agenda item #28, Open forum for public comments at 1:00 p.m. No one sign in to present public comments.

Agenda item #24, continued, Discussion, recommendation and possible action regarding the following board rules and chapters in 22 TAC. No written comments were received. No one signed in

to present oral comments. **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the following rules as published.**

a. Chapter 163. Licensure

- 163.1, relating to Definitions;
- 163.4, relating to Procedural Rules for Licensure Applicants;
- 163.5, relating to Licensure Documentation;
- 163.6, relating to Examinations Accepted for Licensure;
- 163.7, relating to Ten-Year Rule; and
- 163.11, relating to Active Practice of Medicine.

b. Chapter 166. Physician Registration

- 166.1, relating to Physician Registration;
- 166.2, relating to Continuing Medical Education;
- 166.3, relating to Retired Physician Exception;
- 166.4, relating to Expired Registration Permits; and
- 166.6, relating to Voluntary Charity Care Exemption.

c. Chapter 168. Criminal History Evaluation Letters

- 168.1, relating to Purpose; and
- 168.2, relating to Criminal History Evaluation Letters.

d. Chapter 171. Postgraduate Training Permits, with amendments to

- 171.3, relating to Physician-in-Training Permits;
- 171.4, relating to Board-Approved Fellowships; and
- 171.5, relating to Duties of PIT Holders to Report.

e. Chapter 172. Temporary and Limited Licenses, with amendments to

- 172.8, relating to Faculty Temporary License; and
- 172.16, relating to Provisional Licenses for Medically Underserved Areas.

f. Chapter 173. Physician Profiles, with amendments to

- 173.1, relating to Profile Contents; and
- 173.4, relating to Updates to the Physician's Profile Due to Board Action.

h. Chapter 175. Fees, Penalties, and Forms, with amendments to

- 175.1, relating to Application Fees, and
- repeal 175.4, relating to Application Form.

i. Chapter 179. Investigations, with amendments to

- 179.4, relating to Request for Information and Records from Physicians.

j. Chapter 180. Texas Physician Health Program and Rehabilitation Orders, with amendments to

- proposed new rule 180.1, relating to Rehabilitation Orders;
- 180.2, relating to Definitions;
- 180.3, relating to Texas Physician Health Program; and
- proposed new rule 180.7, relating to Rehabilitation Orders.

k. Chapter 187. Procedural Rules, with amendments to

- 187.25, relating to Notice of Adjudicative Hearing.
- 187.26, relating to Service in SOAH Proceedings,
- 187.27, relating to Written Answers in Proceedings and Default Orders; and

187.37, relating to Final Decisions and Orders.

- l. Chapter 190, Disciplinary Guidelines**, with proposed amendments to 190.2, relating to Board's Role, and proposed new rule 190.14, relating to Disciplinary Sanction Guidelines.
- n. Chapter 193, Standing Delegation Orders**, with proposed amendments to 193.6, relating to Delegation of the Carrying Out or Signing of Prescription Drug; and 193.7, relating to Delegated Drug Therapy Management.
- o. Chapter 194. Non-Certified Radiologic Technicians**, with proposed amendments to 194.2, relating to Definitions; 194.3, relating to Registration; and 194.5, relating to Non-Certified Technician's Scope of Practice.

Agenda item #9, Consideration and Approval of Agreed Board Orders. After discussion, Ms. Southard moved, and Dr. Guajardo seconded a motion to add additional facts to the Findings of Facts for the Agreed Order for June W. Colman, M.D. The motion failed.

After discussion, Ms. Southard moved, Dr. Oswalt seconded, and the motion passed to approve the Agreed Order for June W. Colman, M.D., with the following modifications to add a public reprimand, a chart monitor for three years for obstetric cases, order may not be modified for one year, and limit area of practice, due to serious concerns of lack of knowledge of high risk pregnancies. Dr. Guajardo voted against the motion.

After discussion, Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for Bryan C. Lipsen, M.D., with the modification to add mitigating facts to the Findings of Fact for clarification.

After discussion, Dr. McMichael moved, Mr. Turner seconded, and the motion passed to approve the Agreed Order for Ruben Martinez, M.D., with the modification adding a chart monitor that includes fifty percent of total number of deliveries for three years, due to concerns of recognizing high risk pregnancies.

After discussion, Ms. Attebury moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for James R. O'Neill, M.D., as written. Dr. Benavides was recused.

After discussion, Ms. Southard moved, Dr. Arambula seconded, and the motion passed to refer the Jose Hinojosas case to State Office of Administrative Hearing for revocation. The board directed staff to report the case to the District Attorney.

After discussion, Dr. Oswalt moved, Dr. McMichael seconded, and the motion passed to approve the Agreed Order for Joseph J. Patrick, M.D., with the modification to have a proctor on all abdominal surgeries for one year, and to have a chart monitor for three years, due to poor chart records.

After discussion, Dr. Holliday moved, Dr. Oswalt seconded, and the motion passed to approve the Agreed Order for James A. Paskow, M.D., with the modification to included a restriction on all Schedule IV prescriptions, due to concerns of over prescribing.

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Irvin F. Sabrsula, Jr., M.D., with the modification to add ten CME family primary care orthopedics, due to missing the diagnosis of a bone fracture.**

After discussion, **Dr. McMichael moved, Ms. Southard seconded, and the motion passed to approve the Agreed Order for Edward Gripon, M.D., with the modification to a three year chart monitor, due to problems with documentation.**

After discussion, **Dr. Oswalt moved, Ms. Southard seconded, and the motion passed to Approve the Agreed Order for Trisha Dipprey, M.D., with the modification to add a public reprimand, due to unprofessional conduct.**

After discussion, **Mr. Turner moved, Mr. Webb seconded, and the motion passed to approve the following Agreed Board Orders for Carlos Acosta, M.D.; Carlos Arroyo, M.D.; Parnell N. Avery, M.D.; Charles F. Bailey, Jr., M.D.; Charles Lee Breeling, M.D.; Matthew L. Burman, M.D.; Jeffrey C. Caruth, M.D.; Philip W. Caterbone, D.O.; C.C. Chase, M.D.; Patrick Clemons, D.O.; Donald Davenport, M.D.; Ara R. Dayian, M.D.; Rodney N. Dotson, M.D.; Jocelyn B. Dunham, M.D.; Charles E. Ferguson, M.D.; Larry Michael Froberg, M.D.; John E. Halberdier, M.D.; Stanly Barten Heckrodt, M.D.; David Hoblit, M.D.; Lisa J. Kirk, D.O.; Justin L. Koch, M.D.; Randall B. Lane, M.D.; Juan F. Loya, M.D.; Tricia G. Majczenko, M.D.; Steven S. McNutt, M.D.; Thomas R. Morrill, D.O.; James M. Morris, M.D.; Sanjeev C. Patel, M.D.; Harris Rotman, M.D.; M. Ricardo Schack, M.D.; Wei Song, M.D.; Alex Min-Chang Su, M.D.; Justina P. Taube, M.D.; George V. Zuzukin, M.D.; Rizwan H. Bukhari, M.D.; Ben H. Echols, M.D.; Suresh N. Gadasalli, M.D.; Robert L. Hogue, M.D.; David B. Morehead, D.O.; Anthoni R. Romack, M.D.; Marcos J. Valdez, M.D.; Rebecca B. Weprin, M.D.; Henry A. Walter, M.D.; William M. Spurlock, M.D.; Ernest White, M.D.; Jorge Zamora-Quezada, M.D.; James M. Lackey, M.D.; James D. Caddell, D.O.; Brent J. Coleman, D.O.; Jhansi Raj, M.D.; and Charles R. Bailey, Jr., M.D. Dr. Holliday was recused during the deliberation for Carlos Acosta, M.D.**

Agenda item #25, Discussion, recommendation, and possible action regarding proposed emergency rule Chapter 180. Physician Health Rehabilitation Program. After discussion, **Dr. Holliday moved, Dr. McMichael seconded, and the motion passed to approve the proposed emergency rule Chapter 180. Physician Health Rehabilitation Program.**

Agenda item #26, Discussion, recommendation, and possible action regarding proposed rule 187.14 Informal Resolution of Disciplinary Issues Against a Licensee. After discussion, **Dr. Oswalt moved, Mr. Webb seconded, and the motion passed to approve the proposed rule 187.14 Informal Resolution of Disciplinary Issues Against a Licensee.**

There were not items for Agenda item #27, Discussion, recommendation, and possible action regarding Acupuncture rules.

Discussion/Action Items.

Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Consent agenda item #1, A. August 21, 2009 Board Meeting Minutes; B. August 19, 2009 Minutes of the Temporary Suspension Without Notice for Dr. Odette Campbell; C. August 19, 2009 Minutes of the Temporary Suspension Without Notice for Dr. Jeffrey E. Lewis; D. Consideration and approval of the

October 16, 2009 Minutes of the Temporary Suspension With Notice for Dr. Odette Campbell; and E. Consideration and approval of revised May 28, 2009 Finance Committee Minutes

Consent agenda item #2. Committee reports and the consideration and approval of minutes and action items of committees meeting during the board meeting.

Dr. Zeitler gave a report of the Executive Committee meeting. **Dr. Zeitler moved, Mr. Webb seconded, and the motion passed to approve the Executive Committee minutes and action items.**

Dr. Holliday gave a report of the Finance Committee meeting. **Dr. Holliday moved, Dr. Oswalt seconded, and the motion passed to approve the Finance Committee minutes and action items.**

Dr. Zeitler gave a report of the Standing Orders Committee meeting. **Dr. Zeitler moved. Ms. Southard seconded, and the motion passed to approve the Standing Orders Committee minutes and action items.**

Dr. Arambula gave a report of the Licensure Committee meeting. **Dr. Arambula moved, Ms. Southard seconded, and the motion passed to approve the Licensure Committee minutes and action items.**

Dr. McMichael gave a report of the Disciplinary Process Review Committee meeting. **Dr. McMichael moved, Dr. Arambula seconded, and the motion passed to approve the Disciplinary Process Review Committee minutes and action items.**

There being no further agenda items, the meeting adjourned at 4:31 p.m.